

EMPLOYEE PLANS DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY2006 No. 4

Date: August 29, 2006

CAVEATS UNDER THE STAGGERED REMEDIAL AMENDMENT PERIOD FOR INDIVIDUALLY DESIGNED PLANS

Background

Revenue Procedure (Rev. Proc.) 2005-66 established a system of cyclical remedial amendment periods under 401(b) of the Code for individually designed and pre-approved qualified plans. Rev. Proc. 2005-66 specifically provides that determination letters issued for individually designed plans that are received (postmarked) on or after February 1, 2006, must include a statement that the determination letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. In order to satisfy this requirement, special caveats have been created to provide reliance under EGTRRA and to include an expiration date. Additional caveats have also been created to indicate whether the application was filed on-cycle or off-cycle. The new favorable determination letter, Letter 2002, and the new caveats will be used for all EGTRRA individually designed plan applications submitted on or after February 1, 2006. See Exhibit 1 of this QAB.

This bulletin provides guidance for issuing determination letters for Form 5300 applications received on or after February 1, 2006. Specialists are to continue to use [QAB 2005-1](#) for issuing determination letters (Letter 835) for Form 5300 applications received prior to February 1, 2006 and for issuing determination letters for Forms 5307 (Letter 835) and 5310 applications (Letter 1132).

The determination letter provides a historical record that can be useful for future determination requests or for plan examination. The completed case file frequently includes a number of executed and proposed amendments which must be included on the determination letter. It is critical to the integrity of the determination letter program to accurately include the date of each amendment submitted by the applicant, whether proposed or adopted. The TEQMS case administration standards require determination letters to contain accurate and complete information.

EGTRRA Applications Submitted on or after February 1, 2006

Beginning February 1, 2006, the Service began accepting applications for individually designed plans that take into account the requirements of EGTRRA and other items that are identified in Notice 2005-101; the 2005 Cumulative List of Changes in Plan Qualification Requirements. All EGTRRA determination applications submitted on or after February 1, 2006 and closed favorably, will be issued a Letter 2002. See [QAB 2006-2](#) for additional guidance for determining the EGTRRA staggered remedial amendment cycle.

On-Cycle Applications

Within the five-year remedial amendment cycle for an individually designed plan there is a 12-month period of time to file the application for a determination letter. That filing period is the last twelve months of the plan's five-year remedial amendment cycle and runs from February 1 to January 31. Filing during this twelve month period of time is called on-cycle filing. Plan sponsors of individually designed plans that want to preserve reliance on a plan's favorable determination letter must file the Form 5300 application for a new determination letter during their on-cycle period. Specialists will review the employer's EIN or determine if the plan falls under one of the exceptions to the general rule to determine if an application is submitted on-cycle.

An application is considered on-cycle if it satisfies one of the conditions in the following chart

General Rule: If the last digit of the plan sponsor's EIN is--	Exceptions to the General Rule	The plan's cycle is--	Last day of the initial cycle = RAC
1 or 6	CG/ASG election	Cycle A	1-31-07
2 or 7	Multiple	Cycle B	1-31-08
3 or 8	Governmental	Cycle C	1-31-09
4 or 9	Multi	Cycle D	1-31-10
5 or 0		Cycle E	1-31-11

On-cycle caveats for cycles A-E are as follows:

Cycle A: #13 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2012. This letter considered the 2005 Cumulative List of Changes in Plan Qualification Requirements.

Cycle B: #14 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2013. This letter considered the 2006 Cumulative List of Changes in Plan Qualification Requirements.

Cycle C: #15 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2014. This letter considered the 2007 Cumulative List of Changes in Plan Qualification Requirements.

Cycle D: #16 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2015. This letter considered the 2008 Cumulative List of Changes in Plan Qualification Requirements.

Cycle E: #17 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2016. This letter considered the 2009 Cumulative List of Changes in Plan Qualification.

(Please note: there are no variables required to be input.)

Example 1: Employer A sponsors a profit sharing plan (Plan K) that is originally effective January 1, 1988 and the last favorable determination letter issued on the prior 5300 application is dated October 19, 2003. The EIN of Employer A ends in a 7. The 5300 application is submitted on October 15, 2007 (during cycle B) and includes a restated plan that is updated for the 2006 cumulative list. Since this plan is filed on-cycle, caveat 14 will be included on the letter and no variables will be required. The caveat will state that the letter expires January 31, 2013 and that it was reviewed under the 2006 CL.

Off-Cycle Applications

An application filed outside the 12-month period discussed above is considered to be filed off-cycle. An application filed off-cycle should be reviewed using the Cumulative List that would be required for an application filed on-cycle during the period the application was submitted. This means that the determination letter issued for the plan may not take into account any or all of the changes in qualification requirements for which the plan must be amended within the plan's normal remedial amendment cycle.

Determination letters issued for all Form 5300 individually designed plan applications received on or after February 1, 2006 must include an expiration date and a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received.

Determination Letters for applications filed off-cycle will require two caveats; 20 and 21. Each of the two caveats requires you to input one variable. Specifically, caveat 20 requires you to input the year of the expiration date and caveat 21 requires you to input the year of the CL under which your review was considered. Although they are two separate caveats, they will appear and read as one paragraph.

Two separate caveats, 24 and 25, will be used if an application is submitted with an SSN and subsequently assigned an EIN.

The off-cycle caveats read as follows:

Caveat #20 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received. This letter expires on January 31, ____ (YYYY). This

(Example: Cycle B filer comes in February 1, 2006 (cycle A), letter expires January 31, 2008.)

Caveat #21 letter considered the _____ (YYYY) Cumulative List of Changes in Plan Qualification Requirements.

(Example: Cycle B filer comes in February 1, 2006 (cycle A), plan reviewed under the 2005 CL.)

Example 2: Employer J has a DB plan (Plan D) effective January 1, 2005. The original plan was adopted on November 22, 2005. The EIN of the employer ends in a 3 (cycle C). The employer submits a 5300 application on June 30, 2006, (cycle A) with a restated plan that includes the 2005 CL. The plan is off-cycle and if the case is closed prior to February 1, 2008, caveat 20 will be used with year 2009 for the expiration date and caveat 21 will be used with 2005 for the cumulative list.

The SSN caveats read as follows:

Caveat #24 This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received. However, since this application was filed with a Social Security Number (SSN), the next five-year remedial amendment cycle will be based on the Employer Identification Number (EIN), assigned with filing of this application. This letter expires on January 31, XXXX.

Caveat #25 This letter considered the XXXX Cumulative List of Changes in Plan Qualification Requirements

Example 3: A self-employed individual submits an application on June 15, 2007 based on the SSN ending in a 2. The Service assigns an EIN that ends in a 0. The application is reviewed as an on cycle filer and the 2006 CL is used. The expiration date on the letter will be 1/31/16 since the EIN is required to be used in the 2nd cycle.

Working Copy

If the application is received with a working copy, along with the executed amendments to show that all amendments were timely, then caveat 48 should be used to state that we ruled on the working copy that was submitted with the application. The caveat will read as follows:

Caveat #48: This determination letter is applicable to our review of the working copy of the plan and the associated amendments submitted with your application dated xx/xx/xx or month xx, xxxx.

Interim and Discretionary Amendments

For disqualifying provisions or a provision that is integral to a disqualifying provision, an **interim amendment** must be adopted by the later of:

- 1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the RAP begins or
- 2) the last day of the plan year that includes the date on which the RAP begins.

Discretionary amendments must be made by the end of the plan year in which the plan amendment is effective although in some cases they must be adopted earlier in order for the plan to operate in accordance with the plan document.

The Determination letter (Letter 2002) is to include the date(s) of all discretionary and interim amendments that do not pre-date the date of the last determination letter except for any interim amendments that cover guidance published, or any statutes enacted, after the issuance of the Cumulative List for the cycle under which the application was submitted..

All Letters 2002 will include caveat number 10. This is an automatic caveat that states "We are not ruling on any guidance published, or any statutes enacted, after the issuance of the

Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted”.

Form 5621

The second page of the EGTRRA DRAFT Form 5621 Technical Analysis Control Sheet should be used as the case closing transmittal for all cases. The form lists the common caveats for the Letter 2002. If additional caveats are needed that are not listed, they should be added in the field labeled “enter any other caveats that should be considered”. See Exhibit 2 of this QAB.

The caveats included on the determination letter should be limited to those included on (EDS) and the 7000 or 9000 series caveats addressed in QAB 2005-1. If there are situations that have not been addressed in this bulletin or EDS, we recommend the specialists consult with the group manager or contact the EP Determination Quality Assurance Staff prior to adding a 9000 series caveat.

Closing Actions on EDS

Since all EGTRRA cases are mandatory assignment for complete analysis, closing code “01” should be used. No cases should be closed with closing codes “00”, “06” or “09” until the mandatory review requirement is removed..

Exhibit 1 –LETTER 2002 SELECTIVE CAVEATS

Caveat	When to use	Explanation	Variable
13	On-cycle A	Expires on January 31, 2012. Considers the 2005 Cumulative List.	N/A
14	On-cycle B	Expires on January 31, 2013. Considers the 2006 Cumulative List.	N/A
15	On-cycle C	Expires on January 31, 2014. Considers the 2007 Cumulative List.	N/A
16	On-cycle D	Expires on January 31, 2015. Considers the 2008 Cumulative List.	N/A
17	On-cycle E	Expires on January 31, 2016. Considers the 2009 Cumulative List.	N/A
20	Off/Short cycle (requires caveats 20 and 21)	Expires at the end of the first five-year remedial amendment cycle that ends more than 12 months after the application was submitted.	Expiration date (Year-20XX) format
21	Off/Short cycle (requires caveats 20 and 21)	Considered the Cumulative List required for on cycle applications during the period the application was submitted.	Cumulative List (20XX) format
24	Submitted with an SSN that is subsequently assigned an EIN (requires caveats 24 and 25)	Expires on the end of the plan's first five-year remedial amendment cycle that ends more than 12-months after the application was received. Since the application was filed using a SSN the next 5 year RAC will be based on the assigned EIN.	Expiration date (Year-20XX) format
25	Submitted with an SSN that is subsequently assigned an EIN.	Considered the Cumulative List required for on cycle applications during the period the application was submitted.	Cumulative List (20XX) format
29	Foreign plan	Use both caveats 29 and 30.	N/A
30	Foreign plan	Use with caveat 29.	N/A
31	Used for plans that include section 403(b) provisions	Ruling only with respect to the 401(a) plan and not with respect to the 403(b).	N/A
32	Form 5300 and include information in section 14 of Rev Proc 2006-6 (Revised Annually)	Meets the Affiliated Service Group Status (ASG) requirements of section 414(m).	N/A
33	Form 5300 and include information in section 14 of Rev Proc 2006-6 (Revised Annually)	Does not meet the Affiliated Service Group Status (ASG) requirements of section 414(m)	N/A
34	Form 5300 and include information in section 14 of Rev Proc 2006-6 (Revised Annually)	Meets the Leased Employee Status requirements of section 414(n).	N/A

Caveat	When to use	Explanation	Variable
35	Form 5300 and include information in section 14 of Rev Proc 2006-6 (Revised Annually)	Does not meet the Leased Employee Status requirements of section 414(n).	N/A
40	Used only for the initial adoption of the plan.	Indicate the date the employer executed the initial adoption of a plan.	Date (xx/xx/xx or month xx, xxxx)
41	Considers executed amendments for the plan.	Used to indicate the execution date of each amendment after the initial adoption that has NOT been included on a prior determination letter.	Date (xx/xx/xx or month xx, xxxx)
42	Additional Amendment	Used in conjunction with caveat #41; if the numeric format is utilized 2 additional amendments may be added.	Date (xx/xx/xx or month xx, xxxx)
43	Additional Amendment	Used in conjunction with caveats #41 and #42; if the numeric format is utilized 2 additional amendments may be added.	Date (xx/xx/xx or month xx, xxxx)
44	To condition the determination letter on adoption of proposed amendments to the plan.	Indicate the date of the letter used to submit the proposed amendment. If an undated facsimile is used, the received date on the fax should be used.	Date (xx/xx/xx or month xx, xxxx)
45	Additional Proposed Amendment.		Date (xx/xx/xx or month xx, xxxx)
46	Used to condition determination letter on receipt of proposed restated plan.	Use date of cover letter or separate correspondence used to submit restated document.	Date (xx/xx/xx or month xx, xxxx)
47	Proposed amendments or restated plan submitted without a cover letter.	Indicate the signature date on the determination letter application.	Date (xx/xx/xx or month xx, xxxx)
48	Working copy	Indicate the date the application was submitted	Date (xx/xx/xx or month xx, xxxx)
50	Form 5300 submitted with Form 5309.	ESOP plan meets the requirements of section 4975(e) (7).	N/A
51	For plans involved in termination spin-offs or re-establishments.	Letter conditioned on receiving approval of changes in funding amortization. See IRS DOL Implementation Guidelines dated May 24, 1984.	N/A
53	Form 5300 and include information outlined in section 16 of Rev. Proc. 2006-6 (Revised Annually)	Plan meets the requirements of sections 401(h)/420.	N/A

Caveat	When to use	Explanation	Variable
54	Used for amendments to DB plans.	Expresses no opinion on the conversion from a traditional defined benefit formula to a cash balance formula.	N/A
55	Form 5300 and include information in section 10 of Rev Proc 2006-6 (Revised Annually)	Multiple employer plans meet section 413(c)	N/A
57	5300 Partial termination request	Based on the information you have supplied, we have determined that a partial termination occurred on xxxxxx.	Date (xx/xx/xx or month xx, xxxx)
58	5300 Partial termination request	Based on the information you have supplied, we have determined that a partial termination did not occur..	N/A
59	Correction of a prior determination Letter 2002	This letter supersedes our letter dated on or about xxxxxx.	Date (xx/xx/xx or month xx, xxxx)
5997	Addendum included		N/A
5998	Used to indicate a copy of the letter is provided to the authorized Power of Attorney(s)	Copy of letters should be provided to 2nd POA if so authorized per item #7(b) of Form 2848.	N/A

Exhibit 2 – DRAFT page 2 of EGTRRA 5621

PART V – Caveats for Letter 2002				
Caveat Selection	Caveat Number	Caveat Description	Variable Required ?	Variable(s):
	13	On-Cycle “A” Filer	No	
	20/21	Off-cycle Filer	Yes (2)	20 - Year of Expiration: _____ (YYYY) 21 - Year of Cumulative List: _____ (YYYY)
	24/25	Applications filed with SSN	Yes (2)	24 – Year of Expiration: _____ (YYYY) 25 - Year of Cumulative List: _____ (YYYY)
	40	Date Initial Plan Adopted	Yes (1)	
	41	Date of Amendment(s)	Yes	
	42	Date of Additional Amendment(s)	Yes	
	43	Date of Additional Amendment(s)	Yes	
	44	Date of Proposed Amendment(s)	Yes	
	45	Date of Additional Proposed Amendment(s)	Yes	
	46	Date of Proposed Restated Plan:	Yes	
	48	Date application was submitted for Working Copy		
	50	ESOP	No	
	54	Amended Defined Benefit Plans	No	
	5998	POA and Letter to POA 1 _____ Letter to POA 2 _____	No	

PART VI – Additional Caveats

☐ Enter other caveats that should be considered. See QAB regarding caveats (i.e., Leased Employees, Multiple, ASG, etc.)
_____, _____, _____, _____, _____, _____

☐ 9001 Paragraph text: _____

EGTRRA LAW INDICATOR CODES

_____ = Cycle A

PART VII – CASE CLOSING INFORMATION																		
DLN:	17007-	<input type="checkbox"/> ENTITY/POA Correction Made?																
EDS Case Number:																		
Letter Number:	2002	THINGS TO KNOW: <table border="1"> <thead> <tr> <th><u>Vesting Codes:</u></th> <th><u>Closing Codes:</u></th> </tr> </thead> <tbody> <tr> <td>A = Full & Immediate</td> <td>06 = Merit – no contact</td> </tr> <tr> <td>B = Full After 2 Years</td> <td>09 = Merit – with contact</td> </tr> <tr> <td>C = Full After 3 Years</td> <td>00 = Issue Only</td> </tr> <tr> <td>D = Full After 5 Years</td> <td>01 = Complete Analysis</td> </tr> <tr> <td>E = 6 Year Graded</td> <td>03 = Incomplete Submission</td> </tr> <tr> <td>F = 7 Year Graded</td> <td>04 = Application Withdrawn</td> </tr> <tr> <td>G = Other</td> <td>30 = Correction Disposal</td> </tr> </tbody> </table>	<u>Vesting Codes:</u>	<u>Closing Codes:</u>	A = Full & Immediate	06 = Merit – no contact	B = Full After 2 Years	09 = Merit – with contact	C = Full After 3 Years	00 = Issue Only	D = Full After 5 Years	01 = Complete Analysis	E = 6 Year Graded	03 = Incomplete Submission	F = 7 Year Graded	04 = Application Withdrawn	G = Other	30 = Correction Disposal
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Vesting Code:																		
Effective Date:																		
Expiration Date:	January 31, _____																	
Law Indicator Code:																		
On-cycle:	Yes or No (circle one)																	
Year of Cumulative List	_____ (YYYY)																	
Closing Date:																		
Closing Code:	01																	
Specialist Number:																		
Time Charged:																		
Case Grade:																		